

1342 CONDITIONAL RELEASE VIOLATIONS

Chapter: **Juvenile Justice Field Services**

Section: **Youth Supervision**



New Hampshire Division for Children, Youth and Families Policy Manual

Policy Directive: **19-13**

Effective Date: **May 2019**

Scheduled Review Date:

Approved:

A handwritten signature in black ink, appearing to read "J. Ribsam", is written over a light blue background.

Joseph E. Ribsam, Jr., DCYF Director

Related Statute(s): [RSA 169-A](#), [RSA 169-B](#), [RSA 169-D](#), and [RSA 170-G](#)

Related Admin Rule(s):

Related Federal Regulation(s):

Related Form(s): **FORM 1341**

Bridges' Screen(s) and Attachment(s):

The Division for Children, Youth and Families (DCYF) believes that all youth and their families have strengths. Through the development and imposition of graduated sanctions, and consistent with public safety, Juvenile Justice Services (JJS) promotes personal accountability and acceptance of responsibility by youth on conditional release. Consistent with the requirements of RSA 170-G:16, III, the JPPO shall "report promptly to the appropriate district court violations of court orders and conditions which are required by statute, the District Court, or which, in the opinion of the officer, are serious enough to warrant consideration."

Purpose

This policy establishes the requirements and procedures for reporting conditional release violations by youth to the Court.

Definitions

"Absconder" means a juvenile probationer or parolee who hides, conceals, or absents themselves with the intent to avoid legal process or authorized control.

"Child in Need of Services" or "CHINS" means a child/youth under the age of 18:

1. Who is subject to compulsory school attendance, and is habitually, willfully and without good and sufficient cause truant from school;
2. Who habitually runs away from home, or who repeatedly disregards the reasonable and lawful commands of their parent(s)/guardian/custodian, and places themselves or others in unsafe circumstances;
3. Who has exhibited willful repeated or habitual conduct constituting offenses which would be violations under the criminal code of this state if committed by an adult or, if committed by a person 16 years of age or older, would be violations under the motor vehicle code of this state; or
4. With a diagnosis of severe emotional, cognitive, or other mental health issues who engages in aggressive, fire setting, or sexualized behaviors that pose a danger to him/herself or others and who is otherwise unable or ineligible to receive services under RSA 169-B or RSA 169-C; and
5. Who is expressly found to be in need of care, guidance, counseling, discipline, supervision, treatment, or rehabilitation.

"Conditional Release" means a legal status created by court order following an adjudication of a youth that permits the adjudicated youth to remain in the community, subject to: compliance with conditions and limitations of conduct prescribed by the court; treatment prescribed by the court; supervision by a JPPO; and return to court and change of disposition during the term of conditional release for any violations thereof (see: RSA 169-B:2, VIII and RSA 169-D:2, VI).

"DCYF" or the **"Division"** means the Department of Health and Human Services' Division for Children, Youth and Families.

"Delinquent Youth" or **"Delinquent Minor"** means a person who has committed an offense before reaching the age of 18 years which would be a felony or misdemeanor under the criminal code of this state if committed by an adult, and is expressly found to be in need of counseling, supervision, treatment, or rehabilitation as a consequence thereof. (see: RSA 169-B:2, IV).

"JPPO" or **"Juvenile Probation and Parole Officer"** means an employee of DCYF who is authorized by the Division to perform functions of the job classification Juvenile Probation and Parole Officer.

"JPPS" or **"Juvenile Probation and Parole Supervisor"** means the job classification of a person with the powers and authority granted under RSA 170-G:16, employed to perform supervisory-level Juvenile Probation and Parole functions under the supervision of a Juvenile Justice Services Field Administrator.

"Supervision" means authorized and required oversight by a JPPO of a youth who, following adjudication by a NH court as a "delinquent minor" or "child in need of services," is subject to a term of "conditional release."

"Violation of Conditional Release" means a youth on conditional release engaging in prohibited conduct, or failing to perform a required action, as specified by the rules and terms of "conditional release." A "violation of conditional release" is not classified as a crime [see: State v. Brackett, 122 NH 716 (1982); and Robert C. v. Baird, 129 NH 495 (1987)].

Policy

- I. A youth is placed on conditional release by the Court pursuant to RSA 169-B:19, I (d) (Delinquent Minor) or RSA 169-D:17, I (a)(2) (Child in Need of Services/CHINS), and is supervised by the JPPO consistent with RSA 170-G:16, II, and policy 1341 Conditional Release Supervision.
- II. A youth is in violation of conditional release when non-compliant with any of the conditions of release or any other orders issued by the Court.
- III. As required by RSA 170-G:16, III, the JPPO shall report promptly to the appropriate court, any violations of court orders and conditions that are required by statute, the Court, or which, in the opinion of the JPPO, are serious enough to warrant consideration.
- IV. The JPPO shall appear in court during all hearings and, as necessary, produce evidence, provide witness testimony, and make recommendations to the Court.
- V. Violations of conditional release must be filed to the Court prior to the terms of conditional release expiring [see: RSA 169-B:2, VIII, (d)].

- VI. Conditional release violations will be filed by the JPPO through a written motion with the clerk of the Court having jurisdiction over the youth.
- A. The motion prepared by the JPPO shall:
1. Provide written notice to the youth of the alleged conduct that violates conditional release [see: *Stapleford v. Perrin*, 122 NH 1083, 453 A.2d 1304 (1982)]; and
 2. Include the date, time, manner, and place of each violation, as well as the court order and specific condition(s) violated.
- B. The JPPO shall separate multiple conditional release violations into distinct counts within the written motion.
- C. Motions reporting conditional release violations by absconders from supervision, or by youth whose behavior poses an immediate or significant threat to the safety of the community or themselves, shall include a request from the JPPO for the Court to issue a bench warrant or detention order to the appropriate law enforcement agency to locate, apprehend, and bring the youth before the Court.
- D. Motions reporting conditional release violations shall include recommendations by the JPPO for modification of the original dispositional orders and actions that the JPPO believes to be appropriate (RSA 170-G:16, III). The recommendations shall:
1. As applicable to the nature of the violation alleged, be consistent with the dispositional remedies established by RSA 169-B:19 for delinquent youth, or RSA 169-D:17 for children in need of services;
 2. Require youth to be held accountable for their offenses and misbehavior including the restoration of any victims; and
 3. Be appropriate and available.
- VII. Youth placed on probation by other states through the Interstate Compact for Juveniles (see: RSA 169-A), are not subject to court proceedings in NH unless the youth commits an offense in this state for which they are prosecuted.
- VIII. Any concerns that a youth placed through the Interstate Compact for Juveniles has absconded or is non-compliant with the terms of supervision must be addressed pursuant to policy 1595 ICJ Youth Absconder and Reporting Non-Compliance, Failed Supervision and Retaking.

Procedures

- I. When the JPPO determines that a youth under supervision has violated the conditions of release, the JPPO includes the following information in the written motion:
- A. The venue and docket number(s) of the case(s) for which the violation proceedings are being initiated;
- B. A title for the motion (for example: "Motion to Bring Forward for Violation of Conditional Release");
- C. The name of the youth, captioned as follows:

1. For delinquent youth: "In the interest of _____, a minor;" or
 2. For CHINS: "In the interest of _____, a child;"
- D. The youth's date of birth;
- E. The date the youth was placed on conditional release;
- F. The date the youth signed the conditions of release form;
- G. The specific conditions alleged to have been violated, referencing the letter violated, that includes, but is not limited to, the date, time, manner, person, and place of the alleged conduct;
1. When multiple violations are being alleged, each violation must be addressed separately, referencing the letter of the specific item violated;
 2. Failure to separate multiple violations may result in the dismissal of all alleged violations if one count is dismissed;
- H. A prayer for relief containing specific recommendations for change of disposition, including revocation of conditional release with any resulting loss of liberty or other sanctions as warranted; and
- I. A Certificate of Service identifying all parties of record and the date and manner that a copy of the motion was delivered to the parties.
- II. When the alleged violation of conditional release results from technical violations rather than new offenses, and are relatively minor and infrequent, the JPPO meets with the youth and other appropriate case participants to advise, counsel, and reaffirm with the youth the need to comply fully with the terms and conditions of release.
- A. The JPPO shall report these technical violations and interventions at the next scheduled review hearing.
- III. When the alleged violation of conditional release results from commission of a felony, misdemeanor, or other law violation, and may potentially subject the youth to further prosecution in either adult or juvenile proceedings, the JPPO:
- A. Contacts the appropriate law enforcement agency and determines whether the offense has been reported;
1. If the offense has not been reported to law enforcement, reports any available information regarding the incident and requests an investigation;
- B. Requests prosecution of the youth regarding any offense having prosecutorial merit; and
- C. Following adjudication or conviction for a new offense, and when appropriate, initiates revocation proceedings consistent with procedure IV below.

- IV. The JPPO prepares and files a motion with the Court of jurisdiction to report the violations of conditional release.
 - A. A motion shall be completed when:
 - 1. Attempts to enforce the conditions of release using supervision techniques are unsuccessful; or
 - 2. Technical violations of conditional release are severe or recurrent.
 - B. The motion shall request that the court:
 - 1. Schedule a hearing; and
 - 2. Issue an Order of Notice to the youth and other parties of record to appear in court.
- V. When the youth has absconded from conditional release supervision, or when the youth's behavior poses an immediate or significant threat to the safety of the community or the youth, a motion is prepared and filed by the JPPO recommending that the Court issue a pickup, placement, or detention order for:
 - A. The youth to be taken into immediate custody;
 - B. The youth to be brought before the Court; or
 - C. A hearing to be scheduled by the Court.
- VI. Conditional release violations may be prosecuted by:
 - A. The JPPO who filed the motion;
 - B. The JPPS or designated JPPO;
 - C. A DHHS/DCYF staff attorney;
 - D. The Attorney General's office; or
 - E. The original petitioner or Prosecutor of the case for which the youth was adjudicated and placed on conditional release.
- VII. When the JPPO is not the prosecutor, they shall work with the Prosecutor to ensure that they have all discovery materials, the witness/subpoena list, and all other relevant details needed for successful prosecution.
- VIII. The prosecuting JPPO shall:
 - A. Be familiar with the facts of the case;
 - B. Understand and adhere to the rules of the Court, rules of evidence, and general courtroom decorum;
 - C. Be familiar with applicable statutory and case law, including the NH Juvenile Code;

- D. Prepare and provide discovery and the witness list to defense counsel;
 - E. Ensure subpoenas are served to necessary witnesses per jurisdictional practice (see practice guidance);
 - F. Ensure subpoenas are served for necessary records or documents;
 - G. Respond to defense motions;
 - H. Prepare necessary exhibits; and
 - I. Demonstrate that the youth has violated conditional release by preponderance of the evidence.
- IX. Following a true finding on a conditional release violation, the JPPO will submit dispositional recommendations:
- A. If the Court issues new dispositional orders, the JPPO shall complete a new Conditions of Release form (Form 1341); and
 - B. Amend any corresponding documentation.

Practice Guidance

How do I subpoena a witness?

- When it is necessary to subpoena witnesses or documents, speak with your Supervisor or designee about the protocols specific to your jurisdiction.

Can I file a motion for contempt against a youth or parent?

- JPPOs are directed to consult with their Supervisor before initiating contempt proceedings.
- "Contempt" is referenced in both RSA 169-B (Delinquency) and RSA 169-D (CHINS). Although both RSA 169-B (Delinquency) and 169-D (CHINS) reference conditions when contempt is a legal remedy, expected practice for youth who do not comply with conditions of release or other court orders is to proceed with a violation of conditional release as described in this policy.
 - Contempt is referenced in RSA 169-B in the following sections:
 - RSA 169-B:2-a II (Parental Responsibility);
 - RSA 169-B:8 I (Failure to Appear);
 - RSA 169-B: 19 III-a (e) (Dispositional Hearing (i.e. restitution)); and
 - RSA 169-B:45 VI (Vandalism by Minors).
 - Contempt is referenced in RSA 169-D in the following sections:
 - RSA 169-D:7 I (Failure to Appear); and
 - RSA 169-D:17 V (a)(b)(c) (Dispositional Hearing (i.e. restitution)).